



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 6, 1998

Mr. Lee Shapleigh
Assistant County Attorney
El Paso County
500 E. San Antonio, Room 203
El Paso, Texas 79901

OR98-0618

Dear Mr. Shapleigh:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113189.

El Paso County received a request for "all papers allowed by law in the matter of a workman's comp suit filed against El Paso County by former El Paso County District #1 Constable Jerry Ray Jarvis." You submitted responsive records to this office for review. You assert that some of the records, labeled collectively as "Section A" are confidential pursuant to section 402.083(a) of the Labor Code, in conjunction with section 552.101 of the Government Code. You also submitted to this office a collection of documents identified as "Section B" that you indicate may implicate the former employee's privacy interests.

We first address the Section A documents. Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 402.083 provides as follows:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas Workers' Compensation] commission except as provided by this subtitle.
- (b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Section 402.086 of the Labor Code provides that confidential information "remains confidential when released to any person, except when used in court for the purposes of an appeal." *See also* Open Records Decision No. 533 (1989) (construing predecessor confidentiality provision). We agree that the documents labeled as Section A are

confidential. These documents were obtained by the county from the commission's claim file and none of the exceptions to confidentiality appear to be applicable in this situation.

We also reviewed the documents submitted collectively as "Section B." Some of the submitted documents are medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Subsections (b) and (c) of section 5.08 of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. The submitted medical records are confidential and may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We labeled the Section B documents that are confidential medical records.

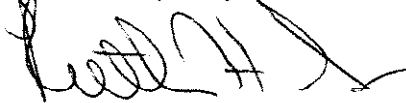
Also, section 552.117 of the Government Code, which makes confidential certain information about "a peace officer as defined by section 2.12, Code of Criminal Procedure", appears to be applicable to information in Section B. Section 552.117 provides that a peace officer's home address, home telephone number, social security number, or information that reveals that the peace officer has family members, is confidential. Thus, this type of information is confidential and may not be disclosed.

We next address your question concerning the privacy interests of the former employee. Both sections 552.101 and 552.102 of the Government Code protect from disclosure on the basis of common-law privacy information that is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), 931 cert. denied, 430 U.S. (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W. 2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) The type of information the supreme court considered intimate and embarrassing in *Industrial Foundation* included information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and

injuries to sexual organs. In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 (1990) at 5 (information concerning emotional state may be protected by common-law privacy). None of the information at issue in Section B is protected from disclosure on the basis of common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 113189

Enclosures: Submitted documents

cc: Mr. Jerry Jarvis
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